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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GREENCYCLE PAINT, INC., a California  
corporation,

Plaintiff,

v.

PAINTCARE, INC., a Delaware corporation;  
CLEAN HARBORS ENVIRONMENTAL  
SERVICES, INC.; a Massachusetts  
corporation; STERICYCLE  
ENVIRONMENTAL SOLUTIONS, INC., a  
Delaware corporation; and DOES 1-10,

Defendant.

CASE NO. 15-cv-04059-MEJ

Hon. Maria-Elena James

**REQUEST FOR JUDICIAL  
NOTICE IN SUPPORT OF  
PAINTCARE, INC.'S MOTION  
TO DISMISS COMPLAINT**

Date: November 3, 2015

Time: 10:00 a.m.

Dept: B

Action filed: August 4, 2015

Removed: September 4, 2015

Trial Date: None Set

## REQUEST FOR JUDICIAL NOTICE

### **I. INTRODUCTION**

Pursuant to Federal Rule of Evidence 201, and in connection with its concurrently-filed Motion to Dismiss the Complaint pursuant to Rule 12(b)(6), defendant PaintCare, Inc. (“PaintCare”) requests that the Court take judicial notice of the following exhibits, true and correct copies of which are attached hereto:

**Exhibit A:** Excerpts of PaintCare’s “California Architectural Paint Stewardship Program Plan,” dated June 4, 2012 (the entire PaintCare plan also is available at

<http://www.calrecycle.ca.gov/Paint/Plans/Paintcare/June4.pdf>);

**Exhibit B:** Approval by the California Department of Resources, Recycling and Recovery (“CalRecycle”) of PaintCare’s California Architectural Pain Stewardship Program Plan, signed on July 19, 2012 (also available at

<http://www.calrecycle.ca.gov/Actions/Documents%5C112%5C2012%5C674%5CApproval%20of%20California%20Architectural%20Paint%20Stewardship%20Program%20Plan.pdf>);

**Exhibit C:** Excerpts of PaintCare’s California Paint Stewardship Program Year 1 Annual Report (2013), dated January 5, 2014 (the entire Annual Report also is available at

<http://www.calrecycle.ca.gov/actions/Documents%5C77%5C20132013%5C966%5CPaintCare%202013%20CA%20Annual%20Report%20with%20Appendices.pdf>);

**Exhibit D:** Approval by CalRecycle of PaintCare’s California Architectural Pain Stewardship Program Year 1 Annual Report, signed on April 15, 2014 (also available at

<http://www.calrecycle.ca.gov/Actions/Documents%5c124%5c20142014%5c1079%5cSigned%20RFA.pdf>);

**Exhibit E:** Excerpts of PaintCare’s California Paint Stewardship Program Year 2 Annual Report (2014), dated November 1, 2014 (the entire Annual Report also is available at <http://www1.calrecycle.ca.gov/Paint/AnnualReport/2014/PaintCare.pdf>); and

**Exhibit F:** Approval by CalRecycle of PaintCare’s California Architectural Pain Stewardship Program Year 2 Annual Report, signed on January 27, 2015 (also available at <http://www.calrecycle.ca.gov/Actions/Documents%5c124%5c20152014%5c1266%5cRequest%20for%20Approval1%20-%20Signed.pdf>).

## II. ARGUMENT

This Court should take judicial notice of Exhibits A, B, C, D, E, and F in considering PaintCare’s Motion to Dismiss. Rule 201(b) of the Federal Rules of Evidence authorizes courts to take judicial notice of facts that are “not subject to reasonable dispute” and “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). No party can reasonably dispute the authenticity of any of the attached exhibits.

A matter that is properly the subject of judicial notice may be considered along with the complaint when deciding a motion to dismiss for failure to state a claim. *See MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (“On a motion to dismiss, we may take judicial notice of matters of public record outside the pleadings.”). The submissions of PaintCare’s Stewardship Plan, PaintCare’s Annual Reports, and the State’s approval of the Stewardship Plan and Annual reports are publically-available documents part of the public record. This Court may take judicial notice of the Stewardship Plan and Annual Reports submitted to the State and the State’s subsequent approval of those submissions pursuant to Federal Rule of Evidence 201. *See Wynn v. Chanos*, 75 F. Supp. 3d 1228, 1235 (N.D. Cal. 2014) (noting that “courts may consider

1 matters of public record,” and therefore taking judicial notice of financial disclosure  
2 forms submitted to the SEC).

3 Further, plaintiff’s complaint refers to and relies upon the content of PaintCare’s  
4 annual reports. Compl. ¶¶ 10, 28. In evaluating a Rule 12 motion, courts should take  
5 judicial notice and consider “documents whose contents are alleged in a complaint.”  
6 *Kniesel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005).

### 7 **III. CONCLUSION**

8 PaintCare respectfully requests that the Court take judicial notice of Exhibits A, B,  
9 C, D, E, and F and consider those exhibits in connection with its concurrently-filed  
10 Motion to Dismiss Complaint.

11 Respectfully submitted,

12 Dated: September 28, 2015

**VENABLE LLP**

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